IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 422 OF 1989

Pune vidyarthi Griha,
By its present Secretary,
Gajanan Rangnath Sant. ... Appellant.

V/s

Bhiku Govind Phadtare ... Respondent

Shri K. Y. Mandlik for the appellant.

None present for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 26TH OCT., 2004.

P.C.:

1. This is an appeal preferred by the unsuccessful plaintiff throughout who had filed the suit for recovery of the amount from the defendant alleging that the defendant had committed breach of contract and conditions mentioned in the document by refusing to take out standing crop of sugarcane from the land Survey No.44, situated at village Parvati, Dist. Pune to the extent of one acre and 38 gunthas amounting to Rs.15,600/- and also by not paying the amount of Rs.10,400/- of the sugarcane crop to the extent of 1 acre and 12 gunthas @ Rs.8000/- per acre as settled in

the document, alongwith the interest on the amount of Rs.5400/- at the rate of 12% p.a. from the date of the suit till the recovery of whole amount and the amount of Rs.1,886/- towards the interest from 13.11.1975 till the date of filing of the suit.

2. I have heard learned counsel Shri Mandlik for the appellant. None appears for the respondents.

The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the suit was bad for non-joinder of necessary parties and also concluded that the plaintiff had failed to prove the impugned agreement between the parties and, therefore, entitled for recovery of the said amount and, as such, the suit came to be dismissed.

The appeal was carried to the District Court, Pune. The learned District Judge, Pune, found that the plaintiff had proved the agreement dated 26.9.1975 and had also proved that under the agreement the plaintiff had sold and defendant had purchased the sugarcane from a 52 Gunthas portion of Survey No.44 at the rate of Rs.8000/- per acre. It was sfurther held that out of the due amount only Rs.5000/- were paid to the plaintiff by the

defendant and the due balance of Rs.5,400/- with interest of Rs.1,836/- were liable to be paid by the defendant. It was also held that the plaintiff appellant was entitled to money decree of Rs.7,236/-, however, the learned appellate Court came to the conclusion that since the plaintiff was the Public Trust and the suit was filed by its Secretary without impleading the remaining trustees as co-trustees, it was not maintainable in law and, as such, the appeal was dismissed. Hence the second appeal.

3. At the time of admission of the appeal, the only question of law was settled to the effect that, whether the suit was maintainable in its present form without impleading the trustees of the plaintiff Trust ?

4. On perusal of the judgment of the lower Appellate Court, it is seen that the learned District Judge was of the view that the suit was filed by the plaintiff which was a Public Trust registered under the Bombay Public Trust Act and it was represented by its Secretary Shri Kashinath Gangaram Sonar and was signed and verified by him alone. Therefore, the question was whether the plaint as filed was in proper manner when the trustees were not joined as co-plaintiffs. According to the

learned District Judge, the moment the plaintiff institutes the suit as a registered Public Trust, it must necessarily be represented by all its trustees, on the ground that in a suit to recover Trust's property from a third party, all the Trustees must be made party, as all the trustees were necessary parties. This view was sought to be countered on behalf of the appellants on the ground that rules and regulations of the plaintiff which is also a registered Society under Societies Registration Act, 1860 stipulates that the Society shall be in possession of all the properties of its institution and of branches and associations in all suits and proceedings for and against the Society, the Society shall be represented by the Secretary or any other person or persons appointed so or council for that purpose. In my view, had it been the fact that the plaintiff was a only Public Trust registered under the Bombay Public Trusts Act, reasoning adopted by the learned District Judge would be applicable to the effect that in a suit to recover Trust's property from the third party, all the trustees must be made co-plaintiffs or parties. However, as is well established legal position, all the societies registered under the Societies Registration Act, 1860 are automatically registered as Public Trusts. However, it is not

applicable conversely in the sense that all the trusts are not societies under the Societies Registration Act. The rule adhered to by the learned District Judge would definitely be applicable to the Public Trust simplicitor who are not registered under the Societies Registration Act, however when the Trust is also registered under the Societies Registration Act, then the rules and regulations framed by the said Society would be relevant and applicable to its activities especially when specific provision for litigating or prosecuting the legal causes is made therein. In view of this position, I have no doubt whatsoever that the view adopted by the learned District Judge that the suit is not maintainable for want of necessary parties, cannot be accepted.

So far as other aspects of the dispute are concerned, the learned District Judge has rightly concluded that the plaintiff is entitled to money decree for the amount of Rs.7,236/- and we need not address to those aspects.

The appeal is allowed with costs.

The judgment and order passed by the District Judge dated 3.11.1988 stands set aside. The suit of the plaintiff is decreed with costs.

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